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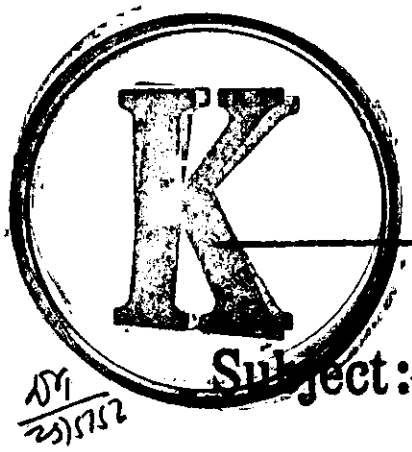

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions in connection with the Leases

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K.N.P.
18/5
L.C. 25152

Office of the R.L.A.

Charging of premium for permitting assignment and division of property leased.

(English) Law of Property, Act, 1925 & (Indian) Transfer of Property Act, 1882.

Section 144 of the Law of Property Act, 1925, engrafts upon every covenant not to assign without consent of the lessor a proviso that no money shall be payable in respect of such consent unless the lease contains an express provision to the contrary. There is no such enactment in India but the same rule would certainly be followed, for profit to the lessor is not the proper purpose of the covenant (see Mulla's Transfer of Property Act, p.618). The practice now obtaining of levying a premium as consideration for giving Government's sanction would, therefore, have no legal support unless such levy is expressly provided for in the lease. Consequently the proposal would not be legally feasible in respect of sanction proposed to be given for the assignment of half share in C.S. No. 379 and much less for the past assignment and division of S. No.110.

Sd.-

P.M.LAD.

28/1

o.c. Remembrancer of Legal Affairs.

.R. to R.D. No. 985, dated 29th January 1948.

K.N.P.
17/5
4.C.

Office of the R.L.A.

Terminating Tenancies in the B.D.D. Chawls.

To mitigate the evil of sub-letting of rooms in the Development Department Chawls, the Director of the Development Department Chawls in his letter at p. 15 ante proposes to take the following action against un-desirable tenants :

1) To terminate the tenancy of absentee t-enants by giving three calendar months' notice.

2) To wait for action for a period of three months, by accepting rent for use and occupation of the room from the actual occupant.

3) If no disputes arises in the meantime about the right of possession from the bonafide tenant, the room in question to be transferred in the name of the actual occupant on accepting a month's rent in advance and treat the room as newly occupied.

4) If any dispute arises after the expiry of the notice, such cases may be defended by Government.

R.L.A. is requested to advise whether the action proposed by the Director, D.D.Chawls, would be legally feasible.

Under clause (16) of the draft Lease at p.9 ante, it is open to Government or the manager of the Development Department Chawls to terminate the tenancy at any time by giving the tenant at least one calendar month's notice in writing expiring at the end of any calendar month. There would, therefore, be no legal objection to terminating the tenancy by giving three month'notice expiring at the end of any calendar month. There would also be no legal objection to accepting rent form the person in actual occupation of the room and also to confirm him in the room as a tenant after the expiry of the period of notice. However, there is one difficulty which may expose Government to litigation. A tenant cannot be evicted except by due process of law. To acknowledge a person, who is not a tenant, as a tenant, and to accept rent

from him would mean the eviction of the previous tenant, and such eviction otherwise than by any legal process would be deemed to be unlawful. Such tenant may file a suit for damages and also hold the Government liable to account for his personal effects, if any, in the room. Consequently the procedure proposed by the Director, Development Department Chawls, may unnecessarily land Government in litigation. He should, therefore, after the expiry of notice take possession of the rooms by due process of law and then lease out to the new tenants.

Sd.-

P.M.LAD.

5/5

o.c. Remembrancers of Legal Affairs.

U.R. to P.W.D. No. 4381 dated the 6th May 1948.

K.N.P.
17/5
4.C.

Office of the R.L.A.

Bombay Mining Concession Rules, 1941.

Right to Mining lease.

The grant of a prospecting licence shall carry with it a right to a mining lease provided Government has no objection (See clause 1 of Part IV of the agreement in Form C under rule 30 of the Bombay Mining Concession Rules, 1941).

Sd.-

P.M.LAD.

5/8

o.c. Remembrancer of Legal Affairs.

U.R. to R.D., No. 7421, dated the 6th August 1948

K.N.P.
17/5
4.C.

Office of the R.L.A.

There can be no legal objection to taking the leasehold property as security for the loan advanced by Government. For assessing the value of such leasehold the Land Acquisition Officer may be consulted.

Sd.-

P.M.LAD

29/10

O.C. Remembrancer of Legal Affairs.

U.R. to Labour Deptt.,No.9905, dated the 22nd October 1948.

K.M.P.
17/5
4.C.

Officers of the R.L.A.

The view taken by Secretary, Revenue Department, in his note at pp.90, 91 ante is correct. Under condition 3 of the Kabuliyat R.B.Shete is bound to keep the land open and on default the land can be resumed under condition. 5.

Sd.-

P.H.LAD

29/10

O.C. Remembrancer of Legal Affairs.

U.R.to R.D.,No. 10212, dated the 30th October 1948.

K.N.P.
17/5
4.C.

Office of the R.L.A.

It appears from the report of the Collector at page 95 ante that even during the year 1947-48 Messrs.J.D. Dalal and Sons allowed cultivation by sub-tenants or servants in plots smaller in area than the prescribed minium of 20 acres. If so, there would be no legal onjection to terminating after notice the lease for the breach of condition 4, for the continuance of the breach after waiver by the acceptance of rent for the year 1946-47 will justify forfeiture (see/652 Mulla's Transfer of Property Act.)

The other points raised by R.D. are not clear. R.D. is requested to state those points clearly for R.L.A's opinion.

Sd.-

P.M.LAD. 4/9

O.C. Remembrancer of Legal Affairs.

U.R. to R.D.No. 8562 dated the 9th September 1948.

K.N.P.
17/5
4.C.

Office of the R.L.A.

Statement of the case.

It appears that the lands in 9 villages from Newasa and Kopargaon talukas in Ahmednagar District were acquired by Government for a public purpose, namely, distribution of land for the better development of the irrigation area and were leased to the Belapur Company subject to certain terms and conditions as stated in the Indenture of lease dated 20 the June 1920. That lease provides that the company shall, after 1st April 1920 hold such portion of the said pieces or parcels of land as it shall from time to time find it practicable to bring under cultivation for a term of 30 years ending on 31st March 1950 renewable at the option of the company for two further periods of 30 years each and one period of 9 years upto an aggregate period of 99 years from 1st April 1920 at the fixed annual rental etc. The question raised for the consideration of the R.L.A. is whether it would be legally feasible for Government to return these lands to their original owners subject to the condition that they should reimburse Government of the amounts actually paid to them by Government for acquisition and abide by the terms and conditions imposed under the lease.

2. Section 109 of the Transfer of Property Act provides

> " If the lessor transfers the property leased or any part thereof or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not by reason only of the such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him.:
>
> provided that the transferee is not entitled to arrears of rent due before the transfer etc."

This provision contains the principle that an assignment of a reversion is an assignment of the lessor's interest. Such assignment of the reversion may be as the section indicates :-

(i) an assignment of the whole reversion or an absolute assignment; or
(ii) an assignment of the reversion in part of the property ; or

(iii) an assignment of parts of the reversion in property. In the first case, there is no severance of the reversion, but in the second and third case, there is a severence of the reversion. The reversion, therfore, may be severed by an assignment of reversion in part or by an assignment of part of the reversion. For instance, if A leases 300 acres to B and then assigns 200 acres to C, there is an assignment of the reversion in part; but if A leases to B from year to year and then grants lease for 21 years to C, there is an assignment of a part of the reversion. In cases of assignment of reversion, the liability of the lessor continues after the qssignment and the lessee is given the option of holding either the lessor or the assignee liable. The assignee of the lessor, has against the lessee, all the rights that the lessor had, and can enforce not only covenants but conditions. He can recover rent due subsequent to the assignment, and his rights, like all liabilities, commence with the assignment (See pages 632,633 of Mulla's Transfer of Property Act). Although section 109 of the Transfer of Property Act does not apply to the crown grants of lands, still the principle contained therein being an equitable one, will apply even to Crown grants land. Prima facie, therefore, there can be no objection to the assignment of Government's reversion under the lease to the original owners of land on payment of the compensation which they refeived under the Land Acquisition Act. However, it appears that there are certain difficulties in the way of such assignment of reversion.

3. The proviso to clause 2 of the lease of 1920 provides that subject to the covenants and conditions of this lease and except so far as the same are hereby varied or modified the rights and liabilities of the company in respect of the said pieces of parcels of land shall, during the term of this lease, be the same as those of an occupant under the provisions of the Bombay Land Revenue Code, 1879 and the rules for the time being in force under the said Code in respect of the occupany of land used for

the purpose of agriculture only. Under clause 3, of rent can be fixed for the first period of 30 years and upon each renewal of this lease, the rent in respect of the lands held under this clause shall be revised so that the same shall represent the same multiples of the regised annual assessmint then obtaining in the neighbourhood in respect of other occupied land of like class. Clause 4 of the lease provides for deyerminin, the non-agricultural rent appropriated to industrial purposes and revising it from time to time under section 48 of the Bombay Land Revenue Code and rules thereunder in force. Clause 6 required the Company to furnish to Government a true and correct retrun of all land occupied and held by the Company under each of the three preceding clause etc. Under clause 11, Government guarantees to the Company a sufficient supply of water for the purpose of its undertaking so far as the same consists of cultivation of sugarcane and other crops for the same period as the lease of the land held under clause 3 hereof such guarantee to be renewable in the same manner and for the same period as the leases of such lands. Reading these privisions together, it appears that Government as lessor has guaranteed the company occupancy rights during the period of the lease and supply of sufficient quantity of water for the purpose of cultivation of sugarcane and other crops. It is possible to provide that the assignment of reversion to the original owners should be subject to the guarantee by Government of supply of water as provided in the lease, and if the lessees have no objection the assignment of such reversion would be valid. However, the condition of guarantee of occupancy rights to the lessees presents a real difficulty. 'Occupant' as defined in section 3(16)

of the Land Revenue Code means a holder in actual possession of unalienated land other than a tenant Provided that where the holder in actual possession is a tenant, the landlord or the superior holder, as the case may be, shall be deemed to be the occupan On assignment of the reversion, the original owners of the land would be deemed to be the landlords of superior hld-holders, and as such, they would be considered occupants within the meaning of section 3(16) . If so, it is doubtful whether by any express condition in the Deed of assignment, it would be possible to deprive these owners of occupancy rights which they will be entitled to under the Land Revenue Code. If these owners are considered occupants and entitled to occupancy rights, it would be difficult to fulfil the conditions in the lease whereby occupancy rights have been guaranteed to the Company during the period of the lease. . Since the point is dountful and is of great importance, the Advocate General is requested to express his opinion on the case.

Sd.-

P.M.LAD.

13/2

O.C° Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No. 1586 dated the 16th February 1948.

K.N.P.
17/5
4.C.

No. 44 of 1948.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 7th October 1948.

U.R. to the Advocate General, Bombay, No.1586 -
dated the 16th February, 1948.

OPINION.

By the Indenture of Lease dated 20th the June 1920, Covernment has given a lease of the lands in nine gillages to the Belapur Company on the terms mentioned therein. As the said lease is directly given by the Covernment the said Belapur Company is an occupant and not a tenant within the meaning of the Bombay Land Revenue Code. Under the proviso to Clause 2 of the said lease the rights and liabilities of the Belapur Company during the period of the lease are to be the same as those of an occupant under the provisions of the Bombay Land Revenue Code 1879. If, therefore, the Government wants to transfer the reversion in the said lands in favour of the original owners a -- difficulty would arise because the rights of the Company as occupant would conflict with the rights of the original owners in whose favour the Government wants to transfer the reversion.

This being the position in Law, unless some sort of an arrangement, by consent, is arrived at, so as to protect and safeguard the rights of the Belapur Company as also the original owners in whose favour -- Government wants to transfer the reversion, a conflict is bound to -- arise.

Sd.-

Advocate General.

K.N.F.
18/5
A.C.

Office of the R.L.A.

The Statement of the Case prepared by the Remembrancer of Legal Affairs and a copy of the opinion of the Advocate General, Bombay, who was consulted in the matter are forwarded to the Revenue Department. The Advocate General agrees with view expressed by the Remembrancer of Legal Affairs in the Statement of the Case.

Sd.-

P.M.LAD.

9/10.

O.C. Remembrancer of Legal Affairs.

J.R. to R.B., No. 9526, dated the 9th October 1948.

K.N.P.
18/5
4.C.

Submitted.

Please see R.L.A.'s opinion No. 4381 dated the 6th May 1948 at pp.25-26 ante regarding eviction of tenants from D.D. Chawls, Bombay. The R.L.A. had advised therein that it would be safer to take possession of the rooms by due process of law and then to transfer them to the new tenants. Regarding this the Director of D.D. Chawls observes that nearly 5000 suited rooms are sub-let at present and filing of 5000 suits is out of question considering delay, labour and expenditure involved. In the circumstances, the Director proposes to transfer tenancy of the rooms on obtaining a mutual consent in writing from the bona fide tenant and the present occupant. This he says will save the cost of litigation and by only a few cases will be left which will have to be taken to a court of law. The P.W.D. considers that there is no objection to the Deirctor's proposal but before issuing orders the papers are shown to R.L.A. for remarks.

L.N.P.
18/5
A.C.